

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

BARBARA BURTON,

Plaintiff,

v.

ETHICON, INC. and
JOHNSON & JOHNSON,

Defendants.

Case No. 3:20-cv-0004-TMB

ORDER ON DEFENDANTS'
MOTION FOR PARTIAL SUMMARY
JUDGMENT (DKT. 26)

The matter comes before the Court on a Motion for Partial Summary Judgment (the “Motion”) filed by Defendants Ethicon, Inc. and Johnson & Johnson.¹ The Motion has been fully briefed and is ready for decision without oral argument.² Based on the Parties’ Joint Status Report, filed on February 3, 2020, the Motion is **GRANTED**.

Prior to its transfer to this Court, this action was consolidated with other cases for pretrial proceedings in the Southern District of West Virginia pursuant to 28 U.S.C. § 1407 . On October 17, 2018, Defendants filed the Motion, which argues that judgment should be entered on the following claims alleged in Plaintiff Barbara Burton’s Amended Short Form Complaint:

1. Count II – Strict Liability – Manufacturing Defect;
2. Count III – Strict Liability – Failure to Warn;
3. Count IV – Strict Liability – Defective Product;
4. Count VIII – Constructive Fraud;

¹ Dkt. 26 (Motion).

² Dkts. 26, 27 (Memorandum of Law); 30 (Opposition), 47 (Status Report).

5. Counts XI and XII – Breach of Implied Warranty;
6. Count XIII – Violation of Consumer Protection Laws; and
7. Count XV – Unjust Enrichment.³

On October 26, 2018, Plaintiff filed an Opposition to Defendant’s Motion for Summary Judgment (“Opposition”).⁴ The Opposition states that Plaintiff will not be pursuing those claims at trial.⁵ Plaintiff intends to pursue the remaining claims, against which Defendants have not moved for summary judgment.⁶

After the case was transferred, this Court issued an Order directing the Parties to file a joint status report addressing whether the issues raised by the Motion have been resolved.⁷ The Parties filed their Joint Status Report on February 3, 2020 and confirmed the Motion “should be granted as Plaintiff has abandoned the claims that were the subject of Ethicon’s Partial Motion for Summary Judgment.”⁸ Accordingly, for the foregoing reasons and based on the Parties’ joint recommendation, the Defendants’ Motion at docket 26 is **GRANTED**.

IT IS SO ORDERED.

Dated at Anchorage, Alaska, this 17th day of February, 2020.

/s/ Timothy M. Burgess
TIMOTHY M. BURGESS
UNITED STATES DISTRICT JUDGE

³ Dkt. 26 at 1. *See* Dkts. 1 (Short Form Complaint); 10 (Amended Short Form Complaint).

⁴ Dkt. 30 (Opposition).

⁵ *Id.* at 1–2.

⁶ *Id.*

⁷ Dkt. 44 (Order).

⁸ Dkt. 47 at 2.